

The issues are: (1) whether the Office properly determined that appellant had abandoned her request for an oral hearing; and (2) whether appellant has established that she was disabled for intermittent dates from September 14 to December 24, 2005 and May 31 through June 1, 2006.

FACTUAL HISTORY

The Office accepted that appellant sustained headaches and a concussion while in the performance of duty on October 27, 2003 when a wall clock fell and struck her head. She did not initially stop work; she had intermittent dates of disability commencing in November 2003.

A March 14, 2005 duty status report (Form CA-17) from an internist diagnosed headache and upper back pain and recommended light duty. On November 18, 2005 appellant filed a claim for compensation (Form CA-7) alleging that she was disabled on September 14 and November 11 to 13, 2005, due to the October 27, 2003 injury. The record also contains CA-7 forms for the period November 29 to December 9 and December 13 and 27, 2005.

In a report dated December 8, 2005, Dr. Yvette Crossing, an internist, stated that appellant was being treated for carpal tunnel syndrome, migraine headaches, neck, back and arm pain. She stated: "injuries were due to on-the-job incidents. Dates September 14 and November 11 [to] 13, 2005." Dr. Crossing stated that the date of injury was October 27, 2003. By report dated December 19, 2005, she stated that appellant was off work December 13, 2005 "due to a work[-]related injury status post [October 27, 2003]." Dr. Crossing also submitted a December 29, 2005 report stating that appellant was treated for injuries including migraines, carpal tunnel syndrome, bilateral knee edema, neck and back pains. She stated that appellant was absent from work on physician's advice for: September 14, November 11 to 13 and 21, November 29 to December 9 and December 13 and 27, 2005.

By report dated January 24, 2006, Dr. Crossing stated that appellant had a history of industrial-related injuries to her neck, back and head. She stated that she could not include a period of disability or the extent of appellant's disability at that time.

In a decision dated February 24, 2006, the Office denied compensation for wage loss for the following dates: September 14, November 11 to 13, November 29 to December 9, December 13 and 24, 2005.¹ The Office found that the medical evidence was insufficient to establish disability causally related to the October 27, 2003 employment injury.

On February 28, 2006 appellant requested an oral hearing before an Office hearing representative. The date of the decision was also reported as February 28, 2006. On March 3, 2006 the Office received a brief February 22, 2006 report from Dr. Crossing, who stated that appellant began having migraine headaches after her work-related injury to her head. Dr. Crossing stated that this "suggests a temporal relationship between the two."

In a letter received by the Office on May 18, 2006, appellant argued that the October 27, 2003 injury had resulted in cervical bulging discs. She submitted an April 19, 2006 report from Dr. Praveen Mummaneni, a neurosurgeon, who diagnosed C3-4, C4-5 and C5-6 bulging discs. Appellant submitted a Form CA-7 claiming disability for May 31 to June 1, 2006.² The record

¹ Although the Office stated December 24, 2005 it appeared that appellant was claiming December 27, 2005 based on the claim CA-7 form.

² The record contains other claim CA-7 forms for compensation for intermittent dates, as well as a notice of recurrence of disability for the period March 21 to 26, 2006.

contains a report dated August 18, 2006 from Dr. James Weisberg, a psychologist, who stated that appellant was seen for cognitive behavioral pain management related to “cervical radiculopathy and difficulty coping with her pain and limitations resulting from an on-the-job injury on October 27, 2003.”

The Office advised appellant by letter dated September 11, 2006, that a hearing was scheduled for October 11, 2006 at 1:00 p.m. in Atlanta, GA. Appellant was advised that the hearing could not be postponed unless the hearing representative could reschedule the hearing during the same hearing trip.

By decision dated September 20, 2006, the Office denied compensation for wage loss for May 31 to June 1, 2006. No other periods of claimed disability were discussed.

The record contains a letter dated September 25, 2006, received by the Office on October 4, 2006, stating that she did not request a hearing for this file number (062100653). An October 10, 2006 letter from the Office advised appellant that a copy of her request for a hearing was enclosed. Appellant did not appear for the hearing scheduled on October 11, 2006. In a decision dated October 27, 2006, the Office determined that appellant had abandoned her request for an oral hearing.

LEGAL PRECEDENT -- ISSUE 1

A claimant who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.³ Unless otherwise directed in writing by the claimant, the Office hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁴ Chapter 2.1601.6(e) of the Office’s procedure manual, dated January 1999, provides as follows:

“e. Abandonment of Hearing Requests.

(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district office]. In cases involving precoupment hearings, H&R will also issue a final

³ 20 C.F.R. § 10.616(a).

⁴ 20 C.F.R. § 10.617(b).

decision on the overpayment, based on the available evidence, before returning the case to the DO.”

ANALYSIS -- ISSUE 1

In the present case, the Office advised appellant of a hearing scheduled on October 11, 2006. Appellant does not dispute that she was aware of the scheduled hearing. She did submit a September 25, 2006 letter stating that she had not requested a hearing with regard to this claim. The record reflects that appellant has filed other claims; it is not clear whether she was simply mistaken in stating that she did not request a hearing, or she believed the hearing request was related to another claim. In any case, the evidence supports a finding that appellant had requested an oral hearing on the February 24, 2006 decision and her September 25, 2006 letter does not specifically request a postponement. The Office did advise appellant that she had requested a hearing and that she had an opportunity to provide notification within 10 days of the scheduled hearing of her reasons for not appearing.

Appellant did not request a postponement, did not appear at the scheduled hearing and she failed to provide any notification for such failure to appear within 10 days of the scheduled date of the hearing.⁵ Accordingly, she has abandoned her request for a hearing. In accord with Office procedure, the H&R properly issued a decision finding that appellant had abandoned her request for a hearing.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁸

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁹ Findings on examination are generally needed to support a physician’s opinion that an employee is disabled for work. When a physician’s statements regarding an employee’s ability to work consist only of repetition of the

⁵ Appellant submitted evidence after October 27, 2006 with regard to attempts to contact the H&R by telephone on October 11, 2006. Since this evidence was not before the Office at the time of its final decision, the Board cannot consider the evidence on this appeal. 20 C.F.R. § 501.2(c).

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁹ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.¹⁰ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹¹

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹² Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁴

ANALYSIS -- ISSUE 2

The specific dates of claimed disability in this case covered by the Office decisions dated February 24 and September 20, 2006 are: September 14, November 11 to 13, November 29 to December 9, December 13 and 27, 2005 and May 31 to June 1, 2006. Appellant must submit probative evidence of disability causally related to the employment injury for these dates. The employment injury in this case is the October 27, 2003 head injury accepted for headaches and concussion.

None of the medical reports of record provide a rationalized opinion on disability for the specific dates claimed and the October 27, 2003 employment injury. In Dr. Crossing's December 29, 2005 report, she referred to the specific dates claimed, but stated that the injuries were "migraines, carpal tunnel syndrome, bilateral knee edema, neck and back pains." The Office has not accepted any arm, knee or spinal injuries with respect to the October 27, 2003 injury. Dr. Crossing does not provide a medical and factual background, findings on examination or explanation as to how the disability on the dates claimed was related to the employment injury. In her February 22, 2006 report, Dr. Crossing briefly stated that appellant began having migraine headaches after her work-related injury to her head, without providing a

¹⁰ *Id.*

¹¹ *Id.*

¹² *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹³ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

rationalized medical opinion establishing migraine headaches as employment related or establishing a specific period of disability.

The Board finds that the evidence of record is not sufficient to meet appellant's burden of proof with respect to the claimed dates of disability. Accordingly, the Office properly denied compensation for wage loss in this case.

CONCLUSION

The H&R properly determined that appellant abandoned her request for a hearing. With respect to the claimed intermittent dates of disability, the medical evidence is not sufficient to meet appellant's burden of proof.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 27, September 20 and February 24, 2006 are affirmed.

Issued: May 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board